Single Bench (3)

GF 100

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 271 /2005

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

PETITIONER : Tika Ram.
S/o Shri Jaggu Ram,
aged about 39 years,
R/O Jewari, Post: Bija Bhat,
Tahsil : Bemetara,
District : Durg {C.G.}.

Versus

RESPONDENTS :

1. State of Chhattisgarh, through Collector, Durg {Chhattisgarh}.
2. The Election Commission, through District Returning Officer/Collector, Durg {Chhattisgarh}
3. The Assistant Returning Officer/Presiding Officer, Booth No. 178, Block : Bemetara, Tahsil: Bemetara, Distt. : Durg {Chhattisgarh}
4. The Returning Officer {Panchayat}/Tahsildar, Tahsil : Bemetara, Distt. : Durg {C.G.}
5. Shri Nathu Ram Kalar, aged about 62 years, R/O Village : Bija Bhat, Tahsil : Bemetara, Distt. : Durg {C.G.}

P.R. No. 31/1/05
Presented by Tika Ram
dated 25-1-05

Received Copy of Writ Petition 25/1/2005

PARTICULARS OF THE PETITIONER :

As stated in the cause title above.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	31.1.2005 Shri Malay Kumar Bhaduri, counsel for the petitioner. Shri Prashant Mishra, Additional Advocate General for the State/ respondents No.1 to 4. Shri Vipra Sen Agrawal, counsel for respondent No.5. Heard learned counsel for the parties. Return has already been filed on behalf of respondents No.2 to 4. As the return has already been filed on behalf of respondents No.2 to 4, the matter is being disposed of finally the admission stage itself. By the instant writ petition, the petitioner has questioned the legality and propriety of the result in respect of the election of Constituency No.18, Janapad Panchayat, Bemetara, which was held on 15.1.2005, and counting of which also took place on 15.1.2005. However, the result was declared on 22.1.2005. The case of the petitioner is that he contested for the member of Janpad Panchayat, Bemetra Constituency No.18 along with other candidates including the winning candidate namely, Nathu Ram Kalar, respondent No.5 herein. The counting slip Annexure P-1 prepared by respondent No.3, the Assistant Returning Officer, Bemetara, was handed over to the petitioner on 15.1.2005 showing that 58 valid votes in booth No.178 were voted in his favour, three copies of the Annexure P-1 were prepared one of which was	—

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

handed over to the petitioner and others were handed over to the Returning Officer/ Tehsildar (respondent No.4), who in turn prepared the tabulation chart. Based on the counting slip, the Returning Officer prepared the tabulation chart Annexure P-2 in which instead of showing 58 valid votes of the petitioner only 34 votes were shown as polled in favour of the petitioner. On the basis of the said incorrect tabulation chart result Annexure P-3 for the said post was declared on 22.1.2005 declaring respondent No.5 Nathu Ram Kalar as winning candidate who secured 674 valid votes. Therefore, the petitioner has prayed for quashment of the election result Annexure P-3 and for consideration of the genuine counting slip Annexure P-1.

Return has been filed on behalf of respondents No.2 to 4 in which it has been mentioned that in Annexure P-1 counting slip 58 valid votes were incorrectly shown in favour of the petitioner, whereas he obtained only 34 votes. From the diary of the Presiding Officer along with accounts of ballots sent to the Returning Officer, copies whereof are Annexures R-2 & R-3 it would appear that in booth No.178, the total polled votes were 432 out of which 22 votes were invalid. Thus, the valid votes were 410, out of which the petitioner had secured 34 votes. The Presiding Officer after coming to know about the mistake, corrected 58 votes to 34 votes and submitted the accounts of votes to the Returning Officer. If the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

contention of the petitioner is accepted, then the figure of the total votes polled must have been 466, whereas, as per Form 15 total 590 votes were issued for the polling booth No.178, out of which 158 votes were remained unused and only 432 votes were used. As such the contention of the petitioner is incorrect. When the Returning Officer received the diary of the Presiding Officer and the accounts of the ballots Annexures R-2 & R-3, he prepared tabulation chart Annexure R-4. However on receiving the representation of the petitioner, the Returning Officer immediately wrote a letter to the District Election Officer vide Annexure R-6 who in turn sought guidance from the State Election Commission and as the matter was under consideration before the Station Election Commission, the result of the constituency in question was not declared. Thereafter, the State Election Commission passed an order on 21.1.2005 vide Annexure R-7 that the result of Constituency No.18 be declared and accordingly, the result was declared. It has been further mentioned that the writ petition is not maintainable, the only remedy available to the petitioner is to question the election by way of election petition.

I have perused the record. It is true that Annexure R-1 counting slip was issued on 15.1.2005 to the petitioner by the Presiding Officer showing that 58 votes were polled in favour of the petitioner. After counting of total number of votes, tabulation chart Form 18 in respect of

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

polling booth No.178 was prepared by the Presiding Officer and when he counted the total votes polled in favour of the seven candidates, the Presiding Officer immediately realized the mistake and corrected the figure of valid votes cast in favour of the petitioner from 58 to 34. Form 15 shows that out of 590 ballots issued 432 votes were used, whereas 158 votes remain unused. Therefore, perusal of Annexure R-3 Form 15 and also Form 18 would show that apparent mistake was committed by the Presiding Officer. When the Returning Officer received the diary of the Presiding Officer and accounts of the valid votes, Annexure R-2 & R-3, he prepared the tabulation chart Annexure R-4 and that was prepared correctly. However, on 18.1.2005, the petitioner herein made a representation Annexure R-5 before the Returning Officer. On receiving this, the Returning Officer wrote a letter to the District Election Officer vide Annexure R-6 showing the correct picture and in turn sought guidance from the State Election Commission. Vide Annexure R-7 the State Election Commission on perusing the whole record permitted the result to be announced. Therefore, from the perusal of Annexure R-3 Form 15 & Form 18 meant for accounts of total votes polled in favour of the candidates and the tabulation chart Annexure R-4, prima facie, disclose that there was some mistake at the time of writing in the counting slip and 58 votes were shown instead of 34 in favour of the petitioner. Therefore, prima-facie

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the explanation given in the return along with documents appears to be plausible and the petitioner has not been able to make out a case for intervention by this Court under Article 226 of the Constitution of India, but if the petitioner has still any doubt about the correctness of the documents submitted by the respondents and explanation offered by the respondents, then that can be inquired into in an election petition.

In the circumstances, the petitioner can avail the alternative remedy available to him under the Panchayat Act by way of filing election petition, if so advised.

In the result, this writ petition is liable to be dismissed and it is dismissed. No costs.

Consequently, M.(W.)P.No.236/2005 stands disposed of.

Sd/-
L.C. Bhadoo
Judge

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